

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

TAYLOR MARIE MORGAN,  
Plaintiff,

v.

FOR A NEW SOCIAL SECURITY  
NUMBER,  
Defendants.

3:18-cv-00327-MMD-CBC

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

Before the Court is Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) and her *pro se* complaint (ECF No. 1-1).<sup>1</sup> Having thoroughly reviewed the record, the Court recommends that the application to proceed *in forma pauperis* be granted. Furthermore, the Court recommends that the complaint be dismissed with prejudice and without leave to amend for the reasons stated below.

**I. IN FORMA PAUPERIS APPLICATION**

Based on the financial information provided with Plaintiff's application to proceed *in forma pauperis*, the Court finds that Plaintiff is unable to pay the filing fee in this matter. (ECF No. 1). Accordingly, the Court grants Plaintiff's application to proceed *in forma pauperis*.

**II. LEGAL STANDARDS**

**A. Standards for Screening Pursuant to Rule 12(b)(6)**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. §1915. Specifically, federal courts are given the authority to dismiss a case if the action "(i) is frivolous or malicious; (ii) fails to state a

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<sup>1</sup> This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. This action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant  
2 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Dismissal of a  
3 complaint for failure to state a claim upon which relief may be granted is provided for in  
4 Federal Rule of Civil Procedure 12(b)(6), and this Court applies the same standard  
5 under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended  
6 complaint. See *Hamilton v. Brown*, 630 F.3d 889, 892-93 (9th Cir. 2011). When the  
7 Court reviews a complaint under this standard, it accepts as true all the plaintiff’s  
8 allegations and construes the complaint in the light most favorable to the plaintiff. *Chubb*  
9 *Custom Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The  
10 Court takes particular care when reviewing the pleadings of a *pro se* party. In this  
11 instance, a more forgiving standard applies to litigants not represented by counsel.  
12 *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010). This Court is to “construe *pro se*  
13 filings liberally . . . and to ‘afford the petitioner the benefit of any doubt.’” *Id.*

14 Although the standard is broad, it is not limitless. Despite the leniency afforded to  
15 *pro se* plaintiffs, the Court need not accept as true conclusory allegations, unwarranted  
16 deductions, or unreasonable inferences. *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969,  
17 973 (9th Cir. 2004). Further, the complaint must contain more than a “formulaic  
18 recitation of the elements of a cause of action;” it must contain factual allegations  
19 sufficient to “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v.*  
20 *Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Stated  
21 differently, the complaint must allege sufficient facts to state a claim “that is plausible on  
22 its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)  
23 (citing *Twombly*, 550 U.S. at 555).

24 B. Legal Standards Under Rule 12(1)(a)

25 Aside from the above, “federal courts are courts of limited jurisdiction. They  
26 possess only that power authorized by Constitution and statute ....” *Kokkonen v.*  
27 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391,  
28 (1994) (internal citations omitted). Rule 12(b)(1) allows for dismissal of an action where

1 federal subject matter jurisdiction is lacking. "When subject matter jurisdiction is  
2 challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden of  
3 proving jurisdiction in order to survive the motion." *Tosco Corp. v. Cmtys. for a Better*  
4 *Env't*, 236 F.3d 495, 499 (9th Cir.2001).

5 Dismissal for lack of jurisdiction may be determined "either on the face of the  
6 pleadings or by presenting extrinsic evidence." *Warren v. Fox Family Worldwide, Inc.*,  
7 328 F.3d 1136, 1139 (9th Cir.2003) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th  
8 Cir.2000)). When jurisdiction is facially attacked, a plaintiff is entitled to safeguards  
9 similar to those applicable when a Rule 12(b)(6) motion is made. See *Sea Vessel Inc. v.*  
10 *Reyes*, 23 F.3d 345, 347 (11th Cir.1994); *Osborn v. United States*, 918 F.2d 724, 729 n.  
11 6 (8th Cir.1990). The factual allegations of the complaint are presumed to be true, and  
12 the motion is granted only if the plaintiff fails to allege an element necessary for subject  
13 matter jurisdiction. *Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036,  
14 1039 n. 1 (9th Cir.2003); *Miranda v. Reno*, 238 F.3d 1156, 1157 n. 1 (9th Cir.2001).

### 15 **III. DISCUSSION**

16 The Court takes the facts from Plaintiff's complaint as true and has discerned the  
17 substance of the complaint as best as it can. Plaintiff has not named any defendants in  
18 the complaint. Rather, Plaintiff appears to be requesting *the court* to issue Plaintiff a  
19 new social security number or to issue an order directing the Social Security  
20 Administration to issue a new social security number to Plaintiff. (ECF No. 1-1.) Plaintiff  
21 seeks a new social security number in order to begin a new life after escaping an  
22 abusive situation. (*Id.*) However, Plaintiff's complaint does not state or indicate whether  
23 she applied for a new social security card or a replacement social security card. Nor are  
24 there any allegations that the Social Security Administration has refused to issue a new  
25 card or a replacement card or has taken any action to prevent her from doing so. To the  
26 contrary, Plaintiff's complaint expressly states that the social security administration is  
27 "helping her" with this issue, but she was told to seek a court order.

1           However, under the facts stated in the complaint, the court does not have  
2 jurisdiction or authority to grant the relief requested by Plaintiff's complaint. The  
3 Administrative Procedures Act permits a court to "compel agency action unlawfully  
4 withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Act only empowers a court to  
5 compel a federal agency "to perform a ministerial or non-discretionary act," or "to take  
6 action upon a matter, without directing how it shall act." *Norton v. S. Utah Wilderness*  
7 *Alliance*, 542 U.S. 55, 64, 124 S.Ct. 2373, 159 L.Ed.2d 137 (2004). But the act does not  
8 supersede statutory limitations on jurisdiction. *Clark v. United States*, 462 Fed. Appx.  
9 719, 721 (9th Cir.2011) (citing 5 U.S.C. § 702).

10           Here, the court lacks jurisdiction to grant the relief requested as Plaintiff lacks  
11 standing to bring the present action. There are three requirements that must be met for a  
12 plaintiff to have standing: (1) the plaintiff must have suffered an "injury in fact"—an  
13 invasion of a legally protected interest which is both concrete and particularized and  
14 actual or imminent; (2) there must be a causal connection between the injury and the  
15 conduct complained of; and, (3) it must be likely that the injury will be redressed by a  
16 favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct.  
17 2130, 119 L.Ed.2d 351 (1992); *Wash. Legal Found. v. Legal Found. of Wash.*, 271 F.3d  
18 835, 847 (9th Cir.2001) (en banc).

19           Plaintiff has not alleged any injury in fact, whether actual or imminent. The facts  
20 as stated in the complaint do not state Plaintiff applied for a new social security number  
21 or a new social security card. Moreover, there are no facts that she was denied any relief  
22 that she has requested. To the contrary, Plaintiff expressly states that the Social Security  
23 Administration is "helping" her at this this time. (ECF No. 1-1). Therefore, at present,  
24 Plaintiff has not suffered any injury in fact from the denial or refusal of the Social Security  
25 Administration to provide her with a new social security number or social security card  
26 and thus she lacks standing. As Plaintiff does not have standing to bring the current  
27 action, this court lacks jurisdiction and cannot provide the relief requested. *Nat'l Wildlife*  
28 *Fed'n v. Adams*, 629 F.2d 587, 593 n. 11 (9th Cir.1980) ("[B]efore reaching a decision on

1 the merits, we [are required to] address the standing issue to determine if we have  
2 jurisdiction.”).

3 Therefore, the Court recommends that the complaint be dismissed with prejudice  
4 due to a lack of jurisdiction.<sup>2</sup>

5 **IV. CONCLUSION**

6 The Court lacks jurisdiction to consider this complaint and therefore the complaint  
7 should be dismissed with prejudice and without leave to amend.

8 The parties are advised:

9 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
10 Practice, the parties may file specific written objections to this Report and  
11 Recommendation within fourteen days of receipt. These objections should be entitled  
12 “Objections to Magistrate Judge’s Report and Recommendation” and should be  
13 accompanied by points and authorities for consideration by the District Court.

14 2. This Report and Recommendation is not an appealable order and any  
15 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of  
16 judgment.

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26 <sup>2</sup> The Court directs Plaintiff to Social Security Administration (“SSA”) Publication  
27 No. 05-10093, which lays out the requirements for applying for a new social security  
28 number. Additionally, the Court directs Plaintiff to SSA § RM 00205.058 which  
specifically details the process as it pertains to those who have been harassed, abused,  
or whose life is endangered. U.S. Social Security Administration § RM 00205.058.

1 **V. RECOMMENDATION**

2 **IT IS THEREFORE RECOMMENDED** that Plaintiff's application to proceed *in*  
3 *forma pauperis* (ECF No. 1) be **GRANTED**. This order granting *in forma pauperis* status  
4 shall not extend to the issuance of subpoenas at government expense.

5 **IT IS FURTHER RECOMMENDED** that Plaintiff's Complaint (ECF No. 1-1) be  
6 **DISMISSED WITH PREJUDICE, WITHOUT LEAVE TO AMEND**

7 **IT IS FURTHER RECOMMENDED** that the Clerk close this case.

8 **DATED:** February 22, 2019.

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11 **UNITED STATES MAGISTRATE JUDGE**  
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